IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18158 of 2003
with
SPECIAL CIVIL APPLICATION NOs.759 to 772 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP BABUBHAI MANDALIA

Versus

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Appearance:
1. Special Civil Application No. 18518 of 2003 with
Special Civil Application Nos 759 to 772 of 2004
MR.P.H.Pathak for Petitioner No. 1
Mr.M.H.Rathod for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 24/02/2004

ORAL(COMMON) JUDGEMENT

Rule. Mr.Rathod waives service of rule on behalf of respondents. With the consent of learned advocates for parties matters are taken up for final hearing today.

2. The only question involved in these petitions is whether the order for lowering down of payscale or withdrawal of payscale can be passed without giving opportunity of hearing to the employee concerned or not.

3. The short facts of the cases are that the petitioners are the employees of the respondent-Board which is a statutory body. It further appears that in the month of July, 2003 orders were passed by the Executive Engineer of the respondent No.1-Board whereby the petitioners were placed in the payscale of Rs.950/-. Such orders for placement of petitioners in the payscale of Rs.950/-are produced at annexure D from page 29-35 in respect of different employees including the petitioners herein. It also appears that in respect of the petitioners of SCA Nos.18158/03 and 761,772,762,759,760, 763,767, 764/-4 such orders were passed in July, 1997 and for the petitioners of SCA Nos 768, 771 and 769/04 such orders were passed in the month of July, 1996 and for the petitioners of SCA Nos 766 and 765/04 such orders were in in March 1998 and May, 1997 respectively. It is the case of the petitioners that the aforesaid benefit of fixing of payscale was made in pursuance of the Govt.Resolution, dated 30.10.1991 and it is also further the case of the petitioners that since the petitioners are holding qualification of SSC and they completed 7 years of service from 1.5.1991 they were required to be placed in the payscale of Rs.950/- and accordingly they were placed and the orders which were passed during the aforesaid period were given effect. It is the further case of the petitioners that consequently benefits were also paid to the petitioners in pursuance of the said orders passed on different dates referred to hereinabove. It appears that thereafter in the month of December, 2003, so far as petitioners of Spl.C.A.Nos.18158/03, 763, 767, 764, 761, 772, 762, 759 and 760/04, the orders came to be passed for placing the concerned petitioners in the payscale of Rs.750-940/-and so far as other petitioners, namely, petitioners of SCA Nos 768,771,769,770,766 and 765/04 before such orders were passed placing them in the payscale of Rs.750-940/-as the noticex of this court in concerned petitions were received by the respondents the orders are not passed. However, as per Mr.Rathod for the respondent-Board the orders are to be passed and at that stage matters are being considered by this court.

4. It has been submitted by Mr.Pathak for the

petitioners that once the payscale of the concerned petitioner is fixed in the grade of Rs.950/- such benefit of fixation of payscale should not have been withdrawn without giving opportunity of hearing to the concerned petitioner. Mr.Pathak for supporting said contention has relied upon the decision of this court (Coram:S.D.Shah,J as His Lordship then was and K.R.Vyas,J) dated 14.7.1993 in SCA No.5072/91 and Mr.Pathak for the petitioners further submitted that in respect of the very respondent-Board such question had arisen before the Division Bench in the aforesaid case and the Division Bench had quashed the decision and therefore Mr.Pathak submitted that the impugned order for withdrawal of benefit and/or for refixation of payscale in the lower scale deserves to be quashed on the said ground alone. However, Mr.Pathak also submitted that even otherwise also on merits the order passed earlier for putting the concerned petitioner in the payscale of Rs.950/- is still valid and the same is in accordance with the Government Resolution and the Policy and he submitted that since there is change of officer the impugned orders for withdrawal of benefits of payscale are passed. Mr.Pathak submitted that as such even otherwise also on merits the respondent Board could not have passed the order for lowering down the payscale of the concerned petitioner and therefore he submitted that in any case the order passed by the respondent-Board for withdrawal of payscale of Rs.950/- and for placing the concerned petitioner in the payscale of Rs.750/deserves to be quashed.

5. On behalf of respondent Board Mr.Rathod submitted that when the order came to be passed for placing the concerned petitioner in the payscale of Rs.950/-one express condition in each case was that if there is audit objection then such proceedings was to be accepted and for such purpose undertaking also will have to be executed by the employee concerned. Mr.Rathod submitted that in pursuance of such condition the undertakings were given by the concerned petitioners and copy of one of such undertakings is produced at page 58 onwards. It has been submitted by Mr.Rathod that as per said undertaking it has been specifically undertaken to refund the amount in installments as may be fixed by the Board and therefore Mr.Rathod submitted that once it was expressly provided in the order for fixing the payscale of Rs.950/and the petitioners having given undertaking it is not open to the concerned petitioner now to challenge the said decision when it is found by the officers of the respondent Board that the concerned petitioner was wrongly placed in the payscale of Rs.950/and they were accordingly required to be placed in the payscale of

Rs.750-940/-. Mr.Rathod also submitted that so far as the petitioners of SCA Nos 768,771,769,770,766 and 765/04 are concerned, such order for withdrawal of benefit of putting them in the payscale of Rs.750/- is yet not passed and he therefore submitted that the matter can be said to be premature at this stage. However, Mr.Rathod fairly submitted that the respondent Board proposes to pass the order on the same lines as they have been passed in respect of other petitioners in the present group of petitions. Mr.Rathod further submitted that as such on account of impugned decision the prospective effect of lowering down the payscale of the concerned petitioner in respect of whom the orders are already passed in December, 2003 is given and they are placed in the payscale of Rs.750/-. However, so far as the difference of arrears of payscale which is to be recovered the opportunity of hearing is to be given and thereafter appropriate orders shall be passed. However, Mr.Rathod is unable to show that any hearing has been given to the concerned petitioners before the impugned orders for withdrawal of benefit are passed. The only contention of Mr.Rathod is that since the earlier order for fixing payscale of Rs.950/was passed by mistake and such mistake is corrected and therefore for correction of mistake and for fixing of payscale of Rs.750/- hearing may not be required.

6. Under the above circumstances, it appears that there is no dispute on the point that the opportunity of hearing is not given by the respondent-Board before taking impugned decision to withdraw the benefit of payscale. The only contention raised is that the earlier decision was by mistake and by the impugned decision the same is sought to be corrected. It appears that in case of petitioners of SCA Nos 18158/03, 763, 767, 764,768, 771, 769, 770, 761 and 765/04 orders for placing the concerned petitioner in the payscale of Rs.950/- were passed during the period of 1996, 1997 and 1998 as the case may be. Roughly period of about more than 5 years has passed after placing the concerned petitioner in the payscale of Rs.950/- and it is only in case of petitioners of SCA Nos 761, 772, 762, 759 and 760/04 the orders were passed in July, 2003 for placing them in the payscale of Rs.950/-. So far as those petitioners in respect of whom the orders have been passed for placing them in the payscale of Rs.950/-in the month of July, 2003, possibly the matter can be considered on such ground of correction of mistakes, in case in reality it is a mistake but so far as other petitioners are concerned the period of about more than 5 years as observed earlier has already passed. Of course, in

respect of all the petitioners the questions involved for fixation of payscale in the grade of Rs.750/- or Rs.950/-is common and the authorities may have to consider the relevant aspects while taking decision in respect of all the petitioners. Therefore I find it proper to leave the matter at that stage without examining further on the aspect as to whether the fixation of payscale in the grade of Rs.950/-was by way of mistake or otherwise.

7. In any case, when no opportunity of hearing is given and more particularly in majority of the cases the order came to be passed during the period prior to 5 years the larger question regarding applicability of principles of natural justice at the time of correction of mistake should be left open and the matter should be considered in the light of the decision of the Division Bench of this court in SCA No.5072/91 on the ground of giving opportunity of hearing for withdrawal of payscale. In the said decision of the Division Bench at para 2 it has been observed as under:

> "In our opinion, even if the petitioner was not entitled to grant of minimum timescale of pay under the Govt.Resolution, the impugned action could not have been taken by the respondent Board without hearing the petitioner and without affording him an opportunity of being heard and to show cause as to why the time scale of pay which is already granted should not be withdrawn."

After observing the aforesaid the Division Bench of this court has quashed the action and left it open to the Board to take appropriate action after observing the principles of natural justice and after giving opportunity of hearing to the petitioner.

8. In view of the aforesaid, I find that the other aspects regarding granting of payscale of Rs.950/- was by mistake or not, the applicability of Govt.Resolution, dated 17.10.1988 and 13.10.1991 and other aspects incidental thereto should be left open to the authority for appropriate decision, but the impugned decision can not be sustained on the ground of breach of principles of natural justice as the opportunity of hearing has not been given to the concerned petitioner before withdrawing the benefit of payscale.

9. In the result, the impugned decision passed in December, 2003 so far as it relates to petitioners of SCA Nos 18158/03, 763, 767, 764, 761, 774, 762, 759 and

760/04 for placing the concerned petitioners in payscale of Rs.750/- to 940/- are quashed and set aside with further direction that in case the respondent Board is desirous to withdraw the benefit of payscale on the ground available in law then formal show cause notice shall be issued to the concerned petitioner and opportunity of hearing shall be given to the concerned petitioner and thereafter it would be open to the respondent Board to pass order in accordance with law. Rule in the each of the said petitions is made absolute accordingly.

10. So far as the petitioners of SCA Nos 768, 771, 769,770, 766 and 765/4 are concerned, since as per the declaration made by the respondent Board orders are not passed, no further final directions are called for at this stage except observing that since said petitioners are similarly situated with the aforesaid group of petitioners in which orders are already passed the respondent Board shall follow the same procedure and shall be at liberty to pass order in accordance with law after giving opportunity of hearing to the concerned petitioners. In each of such petitions subject to aforesaid observations and directio
discharged.

Considering the facts and circumstances of the case there shall be no costs.

24.2.2004 (JAYANT PATEL,J)